

ESTTA Tracking number: **ESTTA499067**

Filing date: **10/09/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056238
Party	Plaintiff TracFone Wireless, Inc.
Correspondence Address	CANDICE KIM GREENBERG TRAURIG LLP 1840 CENTURY PARK EAST SUITE 1900 LOS ANGELES, CA 90067 UNITED STATES latm2@gtlaw.com, dcipmail@gtlaw.com, wadykas@gtlaw.com
Submission	Other Motions/Papers
Filer's Name	Candice E. Kim
Filer's e-mail	latm2@gtlaw.com, dcipmail@gtlaw.com, kimce@gtlaw.com
Signature	/cek/
Date	10/09/2012
Attachments	Notice Regarding Returned Service Copy.pdf (3 pages)(9413 bytes) Exhibit 1.pdf (4 pages)(130949 bytes) Exhibit 2.pdf (2 pages)(112563 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TRACFONE WIRELESS, INC.,

Petitioner,

v.

FITAGE GMBH,

Respondent.

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Cancellation No.: 92056238

**NOTICE REGARDING RETURNED SERVICE COPY OF
PETITION FOR CANCELLATION AS UNDELIVERABLE**

Pursuant to TBMP § 310.02, Petitioner TracFone Wireless, Inc. (“Petitioner”), hereby provides notice to the Trademark Trial and Appeal Board (the “Board”) that the Respondent, Fitage GmbH (“Respondent”) is no longer in business. Accordingly, Petitioner respectfully requests that the Board publish notice of the filing of the Petition for Cancellation against Respondent in the *Official Gazette* pursuant to 37 CFR § 2.118 and allow thirty (30) days for the Respondent to appear in this proceeding. In accordance with TBMP § 310.02, if Respondent fails to appear within the thirty-day period, the Board should issue a default judgment.

Petitioner served its Petition for Cancellation on Respondent on September 25, 2012. On or around October 4, 2012, paralegal for Petitioner’s counsel spoke with a representative from Federal Express who informed her that the Petition for Cancellation was undeliverable because Respondent appeared to no longer be in business. Attached as Exhibit 1 is the Declaration of Grace Linker, paralegal for Petitioner’s counsel. Attached as Exhibit 2 is a photograph of the returned FedEx envelope indicating that the envelope was returned as “Undeliverable Because Company Move.”

In view of the foregoing, Petitioner respectfully requests that that the Board publish notice of the filing of the Petition for Cancellation against Respondent in the *Official Gazette* and allow thirty (30)

days for the Respondent to appear in this proceeding, and, should Respondent fail to appear within the thirty-day period, the Board should issue a default judgment.

Respectfully submitted,

Dated: October 9, 2012

By: /s/ Candice E. Kim
Steven J. Wadyka, Jr.
Candice E. Kim
GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, California 90067
Tel: (310) 586-3867
Fax: (310) 586-0567
latm2@gtlaw.com
dcipmail@gtlaw.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing NOTICE REGARDING RETURNED SERVICE COPY OF PETITION FOR CANCELLATION AS UNDELIVERABLE upon Respondent by depositing one copy thereof to Federal Express, postage prepaid, on October 9, 2012, addressed as follows:

Fitage GmbH
Zur Waldau 15
68239 Mannheim
Federal Republic of Germany

/s/ Candice E. Kim

EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TRACFONE WIRELESS, INC.,

Petitioner,

v.

FITAGE GMBH,

Respondent.

Cancellation No.: 92056238

DECLARATION OF GRACE LINKER
IN SUPPORT OF NOTICE REGARDING RETURNED SERVICE COPY AS UNDELIVERABLE

I, Grace Linker, hereby declare, under penalty of perjury, as follows:

1. I am a Paralegal at Greenberg Traurig, LLP, counsel for Petitioner TracFone Wireless, Inc. ("Petitioner"), and submit this declaration in support of Petitioner's Notice Regarding Returned Service Copy as Undeliverable in the above-captioned proceeding.

2. On October 4, 2012, I called FedEx, and spoke with a representative from FedEx named Lisa. Lisa informed me that the service copy for the Petition for Cancellation in this proceeding, served on September 25, 2012, was undeliverable because no one was at the business to receive or sign for the package. Lisa indicated to me on the phone that it appeared as though the that the business Fitage GmbH was closed. See attached as Exhibit A FedEx Tracking No. 799044990279 tracking history.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of October 2012 in Los Angeles, California.



Grace Linker

EXHIBIT A



Detailed Results

Tracking no.: 799044990279	Select time format: 12H
<div style="display: flex; justify-content: space-between;"> <div> In transit </div> <div> Delivery exception EDINGEN-NECKARHAUSEN DE </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> Shipment Dates Ship date Sep 25, 2012 </div> <div> Destination MANNHEIM DE </div> </div>	

Shipment Facts			
Service type	Priority Envelope	Reference	027207-070000
Weight	1.0 lbs/.5 kg		

Shipment Travel History			
Select time zone: Local Scan Time			
All shipment travel activity is displayed in local time for the location			
Date/Time	Activity	Location	Details
Oct 4, 2012 12:24 PM	Returning package to shipper	EDINGEN-NECKARHAUSEN DE	Returning package to shipper: 479616218887
Oct 2, 2012 12:45 PM	At local FedEx facility	EDINGEN-NECKARHAUSEN DE	
Oct 1, 2012 12:51 PM	At local FedEx facility	EDINGEN-NECKARHAUSEN DE	
Sep 28, 2012 1:02 PM	At local FedEx facility	EDINGEN-NECKARHAUSEN DE	
Sep 27, 2012 5:31 PM	At local FedEx facility	EDINGEN-NECKARHAUSEN DE	
Sep 27, 2012 9:41 AM	Delivery exception	EDINGEN-NECKARHAUSEN DE	Refused by recipient
Sep 27, 2012 9:06 AM	On FedEx vehicle for delivery	EDINGEN-NECKARHAUSEN DE	
Sep 27, 2012 8:44 AM	At local FedEx facility	EDINGEN-NECKARHAUSEN DE	
Sep 27, 2012 5:50 AM	Departed FedEx location	KOELN DE	
Sep 26, 2012 10:36 PM	International shipment release - Import	COLOGNE DE	
Sep 26, 2012 10:31 PM	In transit	KOELN DE	Package available for clearance
Sep 26, 2012 7:18 PM	Arrived at FedEx location	KOELN DE	
Sep 26, 2012 5:02 AM	In transit	MEMPHIS, TN	
Sep 26, 2012 2:13 AM	Departed FedEx location	MEMPHIS, TN	
Sep 26, 2012 1:24 AM	Arrived at FedEx location	MEMPHIS, TN	
Sep 25, 2012 6:44 PM	Left FedEx origin facility	MARINA DEL REY, CA	
Sep 25, 2012 5:22 PM	Picked up	MARINA DEL REY, CA	
Sep 25, 2012 1:40 PM	Shipment information sent to FedEx		

EXHIBIT 2

FedEx Express

05.10.2012 11:56

ORIGIN ID: MHGA TRCK: 4796 1621 8887
Angela StawiarSKI
Federal Express Europe, Inc.
Rosenstr 81

EDINGEN-NECKARHAUSEN, 68635
GERMANY, DE

Ship Date: 04OCT12
ActWgt: 0.5 KG
System#: 1386206/FWST0716
Account: S 210173943

EIN/VAT:

3105867775

FedEx Express

(US)

AWB

XH ISR

CIBA



TRK# 4796 1621 8887

Form 0430

IP ENVELOPE 1/1

REF: UNDELIVERABLE BECAUSE COMPANY MOVE
DESC1: GN18 Business Documents - Return to Sender rtn of 79904499
DESC2: 279
DESC3:
DESC4:

COUNTRY MFG:
CARRIAGE VALUE: USD
CUSTOM VALUE: USD

SIGN: Angela StawiarSKI
T/C: R 248481137
D/T: R 248481137

The Montreal or Warsaw Convention may apply and will govern and in most cases limit the liability of Federal Express for loss or delay of or damage to your shipment. Subject to the conditions of the contract on the reverse.

CONSIGNEE AWB COPY - PLEASE PLACE IN POUCH

Extremely Urgent

FedEx carbon envelope shipping

express services,
go to fedex.com

the container and conditions applicable FedEx Urgent FedEx Service